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VIOLET BLUE

8 UNITED STATES DISTRICT COURT FOR THE

9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN FRANCISCO DIVISION

12 VIOLET BLUE, an Individual,

13 Plaintiff and Counter-defendant,

14 v.

15 ADA MAE JOHNSON a/k/a ADA
WOFFINDEN, an individual d/b/a
16 VIOLET BLUE a/k/a VIOLET a/k/a
VIOLET LUST; et al.,

17 Defendants and Counter-claimants.

Case No. C 07-5370 SI

**STIPULATED
PROTECTIVE ORDER; [PROPOSED]
ORDER THEREON**

19 1. PURPOSES AND LIMITATIONS

20 Disclosure and discovery activity in this action are likely to involve production of
21 confidential, proprietary, or private information for which special protection from public
22 disclosure and from use for any purpose other than prosecuting this litigation would be
23 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
24 following Stipulated Protective Order. The parties acknowledge that this Order does not confer
25 blanket protections on all disclosures or responses to discovery and that the protection it affords
26 extends only to the limited information or items that are entitled under the applicable legal
27 principles to treatment as confidential. The parties further acknowledge, as set forth in Section
28 10, below, that this Stipulated Protective Order creates no entitlement to file confidential

1 2.10. House Counsel: attorneys who are employees of a Party.

2 2.11. Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
3 support staffs).

4 2.12. Expert: a person with specialized knowledge or experience in a matter pertinent to
5 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
6 consultant in this action and who is not a past or a current employee of a Party or of a competitor
7 of a Party's and who, at the time of retention, is not anticipated to become an employee of a
8 Party or a competitor of a Party's. This definition includes a professional jury or trial consultant
9 retained in connection with this litigation.

10 2.13. Professional Vendors: persons or entities that provide litigation support services
11 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
12 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

13 3. SCOPE.

14 The protections conferred by this Stipulation and Order cover not only Protected Material
15 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
16 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
17 parties or counsel to or in court or in other settings that might reveal Protected Material.

18 4. DURATION.

19 Even after the termination of this litigation, the confidentiality obligations imposed by
20 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
21 order otherwise directs.

22 5. DESIGNATING PROTECTED MATERIAL.

23 5.1. Exercise of Restraint and Care in Designating Material for Protection. Each Party
24 or non-party that designates information or items for protection under this Order must take care
25 to limit any such designation to specific material that qualifies under the appropriate standards. A
26 Designating Party must take care to designate for protection only those parts of material,
27 Documents, items, or oral or written communications that qualify – so that other portions of the
28 material, documents, items, or communications for which protection is not warranted are not

1 swept unjustifiably within the ambit of this Order.

2 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
3 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
4 unnecessarily encumber or retard the case development process, or to impose unnecessary
5 expenses and burdens on other parties), expose the Designating Party to sanctions.

6 If it comes to a Party's or a non-party's attention that information or items that it
7 designated for protection do not qualify for protection at all, or do not qualify for the level of
8 protection initially asserted, that Party or non-party must promptly notify all other parties that it
9 is withdrawing the mistaken designation.

10 5.2. Manner and Timing of Designations. Except as otherwise provided in this Order
11 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
12 material that qualifies for protection under this Order must be clearly so designated before the
13 material is disclosed or produced.

14 Designation in conformity with this Order requires:

15 5.2.1. for information in documentary form (apart from transcripts of depositions
16 or other pretrial or trial proceedings), that the Producing Party affix the legend
17 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top
18 of each page that contains protected material. If only a portion or portions of the material on a
19 page qualifies for protection, the Producing Party also must clearly identify the protected
20 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
21 portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY
22 CONFIDENTIAL – ATTORNEYS' EYES ONLY").

23 A Party or non-party that makes original documents or materials available for inspection
24 need not designate them for protection until after the inspecting Party has indicated which
25 material it would like copied and produced. During the inspection and before the designation, all
26 of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
27 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
28 copied and produced, the Producing Party must determine which documents, or portions thereof,

1 qualify for protection under this Order, then, before producing the specified documents, the
2 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top of each page that contains
4 Protected Material. If only a portion or portions of the material on a page qualifies for protection,
5 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
6 appropriate markings in the margins) and must specify, for each portion, the level of protection
7 being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
8 EYES ONLY”).

9 5.2.2. for testimony given in deposition or in other pretrial or trial proceedings,
10 that the Party or non-party offering or sponsoring the testimony identify on the record, before the
11 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify
12 any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’
13 EYES ONLY.” When it is impractical to identify separately each portion of testimony that is
14 entitled to protection, and when it appears that substantial portions of the testimony may qualify
15 for protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on
16 the record (before the deposition or proceeding is concluded) a right to have up to 20 days to
17 identify the specific portions of the testimony as to which protection is sought and to specify the
18 level of protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
19 ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are appropriately
20 designated for protection within the 20 days shall be covered by the provisions of this Stipulated
21 Protective Order.

22 Transcript pages containing Protected Material must be separately bound by the court
23 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or
24 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or
25 nonparty offering or sponsoring the witness or presenting the testimony.

26 5.2.3. for information produced in some form other than documentary, and for
27 any other tangible items, that the Producing Party affix in a prominent place on the exterior of
28 the container or containers in which the information or item is stored the legend

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only
2 portions of the information or item warrant protection, the Producing Party, to the extent
3 practicable, shall identify the protected portions, specifying whether they qualify as
4 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

5 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
6 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’
7 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection
8 under this Order for such material. If material is appropriately designated as “Confidential” or
9 “Highly Confidential – Attorneys’ Eyes Only” after the material was initially produced, the
10 Receiving Party, on timely notification of the designation, must make reasonable efforts to
11 assure that the material is treated in accordance with the provisions of this Order.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1. Timing of Challenges. Unless a prompt challenge to a Designating Party’s
14 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
15 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
16 waive its right to challenge a confidentiality designation by electing not to mount a challenge
17 promptly after the original designation is disclosed.

18 6.2. Meet and Confer. A Party that elects to initiate a challenge to a Designating
19 Party’s confidentiality designation must do so in good faith and must begin the process by
20 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)
21 with counsel for the Designating Party. In conferring, the challenging Party must explain the
22 basis for its belief that the confidentiality designation was not proper and must give the
23 Designating Party an opportunity to review the designated material, to reconsider the
24 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
25 designation. A challenging Party may proceed to the next stage of the challenge process only if it
26 has engaged in this meet and confer process first.

27 6.3. Judicial Intervention. A Party that elects to press a challenge to a confidentiality
28 designation after considering the justification offered by the Designating Party may file and

1 serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
 2 applicable) that identifies the challenged material and sets forth in detail the basis for the
 3 challenge. Each such motion must be accompanied by a competent declaration that affirms that
 4 the movant has complied with the meet and confer requirements imposed in the preceding
 5 paragraph and that sets forth with specificity the justification for the confidentiality designation
 6 that was given by the Designating Party in the meet and confer dialogue.

7 The burden of persuasion in any such challenge proceeding shall be on the Designating
 8 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
 9 question the level of protection to which it is entitled under the Producing Party's designation.
 10 identifies the challenged material and sets forth in detail the basis for the challenge. Each such
 11 motion must be accompanied by a competent declaration that affirms that the movant has
 12 complied with the meet and confer requirements imposed in the preceding paragraph and that
 13 sets forth with specificity the justification for the confidentiality designation that was given by
 14 the Designating Party in the meet and confer dialogue.

15 The burden of persuasion in any such challenge proceeding shall be on the Designating
 16 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
 17 question the level of protection to which it is entitled under the Producing Party's designation.

18 7. ACCESS TO AND USE OF PROTECTED MATERIAL.

19 7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed
 20 or produced by another Party or by a non-party in connection with this case only for prosecuting,
 21 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
 22 to the categories of persons and under the conditions described in this Order. When the litigation
 23 has been terminated, a Receiving Party must comply with the provisions of section 11, below
 24 (FINAL DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving Party at a location and
 26 in a secure manner that ensures that access is limited to the persons authorized under this Order.

27 7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
 28 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may

1 disclose any information or item designated CONFIDENTIAL only to:

2 7.2.1. the Receiving Party's Outside Counsel of record in this action, as well as
3 employees of said Counsel to whom it is reasonably necessary to disclose the information for
4 this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is
5 attached hereto as Exhibit A;

6 7.2.2. the officers, directors, and employees (including House Counsel) of the
7 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
8 signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

9 7.2.3. experts (as defined in this Order) of the Receiving Party to whom
10 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
11 Bound by Protective Order" (Exhibit A);

12 7.2.4. the Court and its personnel;

13 7.2.5. court reporters, their staffs, and professional vendors to whom disclosure
14 is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
15 Protective Order" (Exhibit A);

16 7.2.6. during their depositions, witnesses in the action to whom disclosure is
17 reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"
18 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
19 Protected Material must be separately bound by the court reporter and may not be disclosed to
20 anyone except as permitted under this Stipulated Protective Order.

21 7.2.7. the author of the document or the original source of the information.

22 7.3. Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
23 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
24 Designating Party, a Receiving Party may disclose any information or item designated
25 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

26 7.3.1. the Receiving Party's Outside Counsel of record in this action, as well as
27 employees of said Counsel to whom it is reasonably necessary to disclose the information for
28 this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is

1 attached hereto as Exhibit A;

2 7.3.2. Experts (as defined in this Order) (1) to whom disclosure is reasonably
3 necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective
4 Order" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4, below, have
5 been followed;

6 7.3.3. the Court and its personnel;

7 7.3.4. court reporters, their staffs, and professional vendors to whom disclosure
8 is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
9 Protective Order" (Exhibit A); and

10 7.3.5. the author of the document or the original source of the information.

11 7.4. Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL –
12 ATTORNEYS' EYES ONLY" Information or Items to "Experts"

13 7.4.1. Unless otherwise ordered by the court or agreed in writing by the
14 Designating Party, a Party that seeks to disclose to an "Expert" (as defined in this Order) any
15 information or item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS'
16 EYES ONLY" first must make a written request to the Designating Party that (1) identifies the
17 specific HIGHLY CONFIDENTIAL information that the Receiving Party seeks permission to
18 disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or
19 her primary residence, (3) attaches a copy of the Expert's current resume, (4) identifies the
20 Expert's current employer(s), (5) identifies each person or entity from whom the Expert has
21 received compensation for work in his or her areas of expertise or to whom the expert has
22 provided professional services at any time during the preceding five years, and (6) identifies (by
23 name and number of the case, filing date, and location of court) any litigation in connection with
24 which the Expert has provided any professional services during the preceding five years.

25 7.4.2. A Party that makes a request and provides the information specified in the
26 preceding paragraph may disclose the subject Protected Material to the identified Expert unless,
27 within seven court days of delivering the request, the Party receives a written objection from the
28 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

7.4.3. A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement. If no agreement is reached, the Party seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons for which the disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail and suggest any additional means that might be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration in which the movant describes the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and sets forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

In any such proceeding the Party opposing disclosure to the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

1 The purpose of imposing these duties is to alert the interested parties to the existence of
2 this Protective Order and to afford the Designating Party in this case an opportunity to try to
3 protect its confidentiality interests in the court from which the subpoena or order issued. The
4 Designating Party shall bear the burdens and the expenses of seeking protection in that court of
5 its confidential material – and nothing in these provisions should be construed as authorizing or
6 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

7 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
9 Material to any person or in any circumstance not authorized under this Stipulated Protective
10 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
11 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,
12 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
13 this Order, and (d) request such person or persons to execute the “Acknowledgment and
14 Agreement to Be Bound” that is attached hereto as Exhibit A.

15 **10. FILING PROTECTED MATERIAL.**

16 Without written permission from the Designating Party or a court order secured after
17 appropriate notice to all interested persons, a Party may not file in the public record in this action
18 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
19 with Civil Local Rule 79-5.

20 **11. FINAL DISPOSITION.**

21 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days
22 after the final termination of this action, each Receiving Party must return all Protected Material
23 to the Producing Party. As used in this subdivision, “all Protected Material” includes all copies,
24 abstracts, compilations, summaries or any other form of reproducing or capturing any of the
25 Protected Material. With permission in writing from the Designating Party, the Receiving Party
26 may destroy some or all of the Protected Material instead of returning it. Whether the Protected
27 Material is returned or destroyed, the Receiving Party must submit a written certification to the
28 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day

1 deadline that identifies (by category, where appropriate) all the Protected Material that was
 2 returned or destroyed and that affirms that the Receiving Party has not retained any copies,
 3 abstracts, compilations, summaries or other forms of reproducing or capturing any of the
 4 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
 5 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
 6 work product, even if such materials contain Protected Material. Any such archival copies that
 7 contain or constitute Protected Material remain subject to this Protective Order as set forth in
 8 Section 4 (DURATION), above.

9 12. MISCELLANEOUS.

10 12.1. Right to Further Relief. Nothing in this Order abridges the right of any person to
 11 seek its modification by the Court in the future.

12 12.2. Right to Assert Other Objections. By stipulating to the entry of this Protective
 13 Order no Party waives any right it otherwise would have to object to disclosing or producing any
 14 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
 15 no Party waives any right to object on any ground to use in evidence of any of the material
 16 covered by this Protective Order.

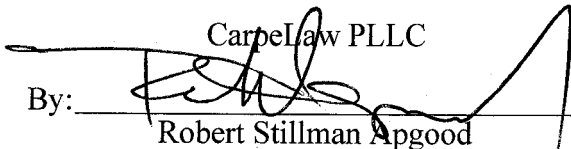
17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

18
 19 Dated: 5/22/08

20 VOGELE & ASSOCIATES

21
 22 By: 
 23 Colette Vogele
 Attorneys for Plaintiff VIOLET BLUE

24 Dated: 5/22/2008

25
 26 By: 
 27 Carpelaw PLLC
 Robert Stillman Appgood

28 Attorneys for Defendant ADA MAE
 JOHNSON a/k/a ADA WOOFINDEN, an

individual d/b/a VIOLET BLUE a/k/a
VIOLET a/k/a VIOLET LUST

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Pursuant to General Order No. 45, Section X(B) regarding signatures, I attest under
penalty of perjury that concurrence in the filing of this document has been obtained from Robert
Apgood.

Dated: _____

VOGELE & ASSOCIATES

By: _____
Colette Vogeles
Attorneys for Plaintiff VIOLET BLUE

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: _____



The Honorable Susan Illston
United States District/Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I
have read in its entirety and understand the Stipulated Protective Order that was issued by the
United States District Court for the Northern District of California on [date] in the case of Violet
Blue v. Ada Mae Johnson, et al., Case No. C 07-5370 SI. I agree to comply with and to be
bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that
failure to so comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item that is subject to
this Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Northern District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number] as my California
agent for service of process in connection with this action or any proceedings related to
enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____
[Printed Name]

Signature: _____
[Signature]